IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

SECOND APPEAL NO. 171 /2004 Single Bench

APPELLANT DEFENDANT NO.1 : Shyam Kumari W/o late Jagdhari (Daughter of Vishram), aged about 33 years, R/o. Gelhapani, P.S. Chirmiri, Tah. Manendragarh, Distt. Koria (C.G.).

VERSUS

RESPONDENTS PLAINTIFF :

R/1. Siyawati w/o. Uma Pandit (as per plaint wife of late Jagdhari), aged about 38 years, R/o. vill. Pasouri, P.S. Kelhari, Distt. Koria (C.G.).

S/R 2. Chief General Manager, S.E.C.L. Chirimiri Area, Malvia nagar, west Chirimiri, Distt. Koria(CG.)

S/R 3. Mines Manager, S.E.C.L. Koria, Colliery, P.S. Chirimiri Distt. Koria (C.G.).

S/R 4. Regional Commissioner, Coal Mines (Provident Funds) Shakti Nagar, Gupteshwar Nagar, Jabalpur (M.P.).

P.R. No. 75 dt 4 Presented by Shri ... 17-03-04

SECOND APPEAL UNDER SECTION 100 OF CIVIL PROCEDURE CODE.

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**आदेश पत्रक**

**मामला क्रमांक** S.A.NO. 171/04 **सन्** **200**

..... **विरुद्ध** .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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| | **06/10/2005**<br>Shri J.K.Shastri, Counsel for the appellant.<br>Shri Anurag Shrivastva, Counsel for the respondent No.1.<br>Shri Vinay Harit, Senior Advocate with Shri N.K. Shrivastva, Counsel for respondents No. 2 to 4.<br>Heard on admission.<br>Respondent No.1 Siyawati filed a Civil Suit in the Court of Civil Judge, Class II, Manendragarh for declaration and injunction. Her prayer was that she be declared the legally wedded wife of deceased Jagdhari and daughters Ku. Sobha and Ku. Nandita to be his legitimate children and consequent to that she is entitled to receive various amounts left by the deceased Jagdhari. She also prayed for issuance of prohibitory injunction order so that the amount left by the deceased may not be paid to defendant No.1/appellant. She pleaded that she was married to Jagdhari in accordance with Hindu rites and rituals, and out of their wedlock Ku. Sobha and Ku. Nandita were born. Deceased Jadghari was an employee in SECL, who during his life time nominated her in his service record as nominee. After the death, appellant/defendant No.1 | |

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started claiming the death claims of Jagdhari stating herself to be the legally married wife of Jagdhari. Even in succession case, appellant/defendant No.1 claimed herself to be the legally wedded wife of Jagdhari. Appellant did not deny the fact that respondent No.1/plaintiff was married to Jagdhari, but she pleaded that 20 – 21 years ago Jagdhari was married to respondent No.1/plaintiff and they as husband and wife lived together for 7-8 years, thereafter they separated due to customary divorce which took place between them. After customary divorce respondent No.1/plaintiff contacted second marriage with Uma Pandit and Ku. Sobha and Ku. Nandita were born as a result of second wedlock. After customary divorce, Jagdhari married to Shyam Kumari and nominated her in some of the service records, as nominee. Out of their wedlock, Ku. Pooja and Indra Kumar were born, therefore, she denying the claim of respondent No.1/plaintiff filed counter claim for declaration that she is the legally wedded wife of deceased Jagdhari.

Respondents No. 2 and 3 although admitted that deceased Jagdhari made nomination for gratuity in favour of respondent No.1 and his brother Lahar Sai, denied the claim. Respondent No.3 unveils that

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deceased Jagdhari nominated respondent No.1/plaintiff for his provident fund deposits.

Parties adduced their evidence in support of their case.

Learned trial Court, after appreciating the evidence held that Ku. Sobha and Ku. Nandita are the daughters of respondent No.1 and deceased Jagdhari. No divorce took place between respondent No.1 and deceased Jagdhari. It was not proved that respondent No.1 was married to Uma Pandit. Learned trial Court declared that respondent No.1 is the legally wedded wife of deceased Jagdhari and out of their wedlock Ku. Sobha and Ku. Nandita were born and as per nomination, she is entitled to receive the claims. In first appeal, learned First Appellate Court, after considering all the facts and evidence, confirmed the finding of the trial Court and dismissed the appeal. Both the Courts below have held concurrently that respondent No.1/plaintiff is the legally wedded wife and Ku. Sobha and Ku. Nandita are legitimate children of deceased Jagdhari and no customary divorce took place between them.

Provisions of Section 3(a) and Section 29 (2) of the Hindu Marriage Act, 1955 read as below:

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*"**Section 3(a)** – the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:*

*Provided that the rule is certain and not unreasonable or opposed to public policy; and*

*Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family.*

***29 (2)** Nothing contained in this Act shall be deemed to affect any right recognized by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act".*

From the above provision it is apparent that to prove customary divorce, necessary pleadings in consonance with the above provisions are required to be made and that are required to be proved by specific evidence, but in the instant case, lack of pleading as well as prove is present.

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| | I am of the opinion that complete case rests on facts. Both the courts below have given concurrent findings after evaluating the evidence on record and after going through the evidence, I do not find the assessment made by the Courts below , in any way, perverse.<br><br>I am of the opinion that this appeal does not involve any substantial question of law, therefore, deserves to be dismissed and is accordingly dismissed.<br><br>**Sd/-**<br>**V.K.Shrivastava**<br>**Judge** | |

Raju